

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DIANNA LYNN HARRIS

Plaintiff, :

:

No. CV-01-0270

v. :

:

(District Judge Conner)

PENNSYLVANIA BOARD OF :

:

PROBATION AND PAROLE, :

:

(Electronically filed)

Defendants.:

MOTION FOR DISMISSAL OF ACTION
PURSUANT TO FED. R. CIV. P. 41(b) AND LR 83.3.1(a)

Defendants, through their counsel, hereby move to dismiss the complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Local Rule 83.3.1(a) and in support thereof state as follows:

1. On February 5, 2004, the Court issued an order scheduling a status conference for February 18, 2004, and directing the parties to meet and confer prior to the status conference in order to agree upon a revised pretrial schedule to be provided to the Court at the conference.

2. The Court's order warned the *pro se* plaintiff that the failure to cooperate in the preparation of the revised pretrial schedule or the failure to attend the status conference could result in sanctions, including the dismissal of this action.

3. Counsel for defendants left several messages for plaintiff at her home and, on February 10, 2004, wrote plaintiff a letter requesting that she contact counsel for defendants in order to arrange a meeting to determine the revised pretrial schedule. A copy of the February 10, 2004, letter is attached hereto as Exhibit 1.

4. Plaintiff did not contact counsel for defendants before the status conference.

5. Additionally, counsel for defendants attended the status conference, but plaintiff neither attended nor contacted the Court.

6. As a sanction for her failure to cooperate in the preparation of a revised pretrial schedule and for her failure to attend the status conference, defendants respectfully request that the Court dismiss this action pursuant to Fed. R. Civ. P. 41(b) and LR 83.3.1(a).

7. Alternatively, pursuant to Fed. R. Civ. P. 11(c)(2) and LR 83.3.1(b), defendants request that the Court determine that defense counsel's reasonable hourly rate is \$150 and award attorneys' fees in the amount of

two hundred twenty-five dollars (\$225.00) for time spent trying to contact plaintiff, attending the status conference, and preparing this motion and the supporting brief. Defense counsel's affidavit justifying her hourly rate is attached hereto as Exhibit 2.

WHEREFORE, the Court should grant the defendant's motion to dismiss the complaint for plaintiff's failure to comply with the Court's February 5, 2004, order. Alternatively, the Court should award attorney's fees to defendants in the amount of \$225.00.

Respectfully submitted,

GERALD J. PAPPERT
Attorney General

By: s/Lisa W. Basial
LISA W. BASIAL
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I.D. #71554

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Chief Deputy Attorney
Chief, Civil Litigation Section
Counsel for Defendants

Dated: February 27, 2004

**IN THE UNITED STATES DISTRICT COURT
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DIANNA LYNN HARRIS

Plaintiff, :

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No. CV-01-0270

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PENNSYLVANIA BOARD OF

:

PROBATION AND PAROLE,

:

(Electronically filed)

Defendants.:

CERTIFICATE OF SERVICE

I, Lisa W. Basial, Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on **February 27, 2004**, I served a true and correct copy of the foregoing **Motion for Dismissal of Action Pursuant to Fed. R. Civ. P. 41(b) and LR 83.3.1(a)** by causing it to be deposited in the United States Mail, first-class postage prepaid to the following:

Dianna Harris
2329 Penn Street
Harrisburg, PA 17110

s/Lisa W. Basial
LISA W. BASIAL
Deputy Attorney General